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Print

14SCA/7538/2010 22/22 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7538 of 2010

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1

Whether Reporters of Local Papers may be allowed to see the judgment ?

2

To be referred to the Reporter or not ?

3

Whether their Lordships wish to see the fair copy of the judgment ?

4

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether it is to be circulated to the civil judge ?

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RAJENDRA VASANTLAL SHAH - Petitioner(s)

Versus

CENTRAL INFORMATION COMMISSIONER & 3 - Respondent(s)

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Appearance :

MR NIRZAR S DESAI for Petitioner(s) : 1,

DS AFF.NOT FILED (N) for Respondent(s) : 1,

MRS MAUNA M BHATT for Respondent(s) : 2 - 3.

NANAVATI ASSOCIATES for Respondent(s) : 4,

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CORAM :

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/11/2010

ORAL JUDGMENT

1.0 Petitioner has challenged an order dated 26.04.2010, passed by the Central Information Commissioner, insofar as the same is adverse to him.

2.0 Issue pertains to certain information demanded by the petitioner under the Right to Information Act, 2005('R.T.I. Act' for short), concerning the accounts and income tax returns of respondent No.4, Shri. Digambar Jain Svadhyay Mandir Trust ('the Trust' for short).

2.1 Petitioner filed an application dated 29.06.2009 and asked for information regarding respondent No.4, the Trust, including audited account books, audited balance-sheets as well as assessment orders of the Trust for the period between 1980 to till date.

2.2 This application came to be dismissed by the Public Information Officer, by an order dated 24.07.2009, observing that:

“ ...

1. Information requested cannot be provided for the following reasons

The information requested falls within the exempted categories under sub rule ...(i).....of section 8 & u/s 11(1) of the Act.

The applicant could not establish that the requested information has any large public interest / arise on account of any public action. To supply information of any person (AOP) can hurt its activities. As this is a public trust any from the public can ask directly to the trust.

The assessee has objected to give information to the third party. On its belief that the intention of the third party are not positive.“

2.3 Aggrieved by the said order, petitioner preferred appeal before the appellate authority, under the R.T.I. Act. Appellate authority dismissed the appeal by an order dated 04.09.2009 approving the view of the Information Commissioner that such personal information of a third party, which is submitted to the public authority in a fiduciary relationship, cannot be divulged.

2.4 Not being satisfied with the said order, the petitioner preferred revision before the higher authority. Such revision was disposed of by an order dated 26.04.2010, holding

that the petitioner is entitled to receive five years of audited books and accounts of the Trust. However, it was held that assessment orders cannot be supplied, by observing :

“11. However, as regards point (ii) above, the position is slightly different. The appellant is requesting for the balanced sheets and their attachments etc. from 1980 onwards. As noted above, we are dealing with a Mandir Trust to which subscriptions are made by the people in general. The subscribers and, for that matter, even other people, are entitled to know as to whether the subscriptions made by them are being put to proper use in terms of the declared objectives of the Trust. Besides, the people in general are also entitled to know whether the funds generated by the said Trust are being managed in a transparent and efficient manner. Viewed thus, it appears to us that there is no harm if the copies of the audited balance sheets of the Trust are disclosed to the appellant. However, there is a catch here. The appellant has requested for this information for last 30 years. In our view, it will be asking for too much to direct the Income Tax Department to cull out this vintage information(which, really, may not be of much value to the appellant) and to divert its resources without commensurate gains. In our view, it would suffice if the CPIO provides copies of the audited balance sheet for last 05 years, if available in his records, to the appellant on payment of requisite fee.”

2.5 It is this order of the revisional authority, which the petitioner has challenged to the extent it denies access to the assessment orders of respondent No.4-Trust.

3.0 Learned Counsel for the petitioner submitted that the petitioner has a keen interest in the functioning of the Trust, as he himself is a donor and belongs to the same religious sub-sect in which the Trust is active. He, further, submitted that the case of respondent No.4 does not fall in any of the exemption clauses contained in Section-8(1) of the R.T.I. Act. He contended that in another order, the Central Information Commissioner has held that Section-8(1)(j) of the the R.T.I. Act cannot be applied to the information pertaining to institutions, associations or corporates.

4.0 On the other hand, learned Counsel for the Income Tax Department opposed the petition, contending that the information supplied by respondent No.4, while filing the income tax returns with the Department was in fiduciary capacity. The same, therefore, cannot be provided to the petitioner, unless he points out some larger public interest.

5.0 Learned Counsel for the Trust relied on the observations made in the orders passed by the authorities and further contended that the petitioner has no locus for seeking such information. He, further, submitted that Revisional authority had allowed the revision application in part, without any notice to the Trust. In any case, the information required by the petitioner falls within Section-8(1)(e)and (j) of the R.T.I. Act.

5.1 He relied on a decision of the Single Judge of this Court, dated 11.08.2008, passed in Special Civil Application No.9295 of 2007, in the case of “P.R. Kapasiawala Vs. Central Information Commission & Others”.

6.0 In order to deal with the rival submissions, it would be necessary to take a closer look at the objects of the Trust and other provisions, concerning its income, expenditure etc..

6.1 Though, the Trust was initially crated under a Deed dated 23.12.1939, at present the Trust is governed by a Scheme formulated by the District Court. A copy of which is available at “Annexure-I” to the petition. Clause-3 of the Scheme pertains to the objects of the Trust. Objects include prorogation and canvassing of the religious sect, known as Digambar Jain Religion, as per the preachings of god Kundkundadhayay, to maintain and restore temples, statutes, prayer halls etc. of the said sect and to organize religious discourses, to publish religious books, dailies, periodicals etc., and such others similar objects.

6.2 Clause-4 of the Scheme pertains to the property and scope of operations of the Trust and provides inter alia that all the lands buildings, temples etc., would be of the ownership of the Trust. Any other property acquired, thereafter, by way of purchase of land or construction of a building or by saving funds shall also be the property of the Trust and shall be applied for the objects of the Trust.

6.3 Clause-5 pertains to the funds of the Trust. The trust is permitted to receive gifts, donations, interest, rent etc., for creating its own funds. Such funds are to be applied for the objects of the Trust.

6.4 Clause-13 pertains to the rules concerning the Trust, in particular, sub-clause-(4) and (5) thereof, permit the Trust to receive donations, gifts, in the form of immovable and moveable properties, to create the funds of the Trust.

6.5 Sub-clause-6, thereof, permits the Trust to invest its surplus funds in deposits. Provisions are also made to permit the Trust to make the expenditure, for the objects of the Trust.

6.6 The Trust is registered under the Bombay Public Trusts Act, 1950, which is enacted to make better provisions for public, religious and charitable, trusts in the State. Under the Bombay Public Trusts Act, respondent No.4 is subjected to certain controls

and scrutiny by the Charity Commissioner or its delegate. The accounts of respondent No.4 are required to be, statutorily, audited.

6.7 From the above, it can be seen that respondent No.4 is not and cannot be equated with an individual citizen, who is opposing the request of a person under the R.T.I. Act, for supplying his income tax returns or assessment orders. Respondent No.4 is a religious charitable Trust, constituted under the Scheme framed under an order of the District Court, registered and governed under the Bombay Public Trusts Act, 1950. Its activities revolve around religious discourses, preachings, publication of religious literature, looking after temples, statues in such temples etc..

7.0 With this background in mind, one may advert to the relevant provisions contained in the R.T.I. Act.

7.1 The statement of objects and reasons for enactment of the R.T.I. Act, reads as under:

“STATEMENT OF OBJECTS AND REASONS

In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, inter alia, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc. in view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. the proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

The bill seeks to achieve the above objects. ”

7.2 From the preamble of the said Act it can be seen that the RTI Act was enacted “to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.” It was felt that “democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed”. However, at the same time legislation also felt that “revelation of information in actual practice is likely to conflict with other public interests including efficient operation of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information”. With the aim of harmonizing these conflicting interests while preserving the paramountcy of the democratic ideal, the RTI Act was enacted.

7.3 The term 'Right to Information', as defined in Section-2(j) of the R.T.I. Act, reads as under:

“2. ...

(j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer in any other device;”

7.4 Section-3 of the Act grants to the citizens, right to information, in following terms:

“3. Right to Information.- Subject to the provisions of this Act, all citizens shall have the right to information.”

7.5 Section-4 of the R.T.I. Act pertains to obligation of the public authorities and include large number of responsibilities to facilitate and implement all the provisions of the said Act. In particular, Sub-Section-(2) of Section-4 provides that it shall be constant endeavor of every public authority to take steps, in accordance with requirements of clause-(b) of Sub-section-1 to provide as much information suo motu to the public at large, at regular intervals, through various means of communications.

7.6 Section-6 of the R.T.I. Act pertains to request for obtaining information.

7.7 Section-7 of the R.T.I. Act pertains to disposal of such requests. In particular, it requires Public Information Officer of the Central or the State Government, as the case may be, to dispose of such applications as expeditiously as possible and in any case, within 30 days from the date of receipt of such a request.

7.8 While, on the one hand, the legislature realized need for transparency in governance, making available as much information as possible to the public at large, on the other hand, realized that it may not, in certain circumstances, be in the public interest to provide such information. Section-8 of the R.T.I. Act, therefore, provides for exemptions from disclosure of information under certain circumstances.

7.9 Sub-section-(1) of Section-8 reads as under:

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) information received in confidence from foreign government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including decision of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over;

provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer of the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.“

7.10 Sub-section-(2) of Section-8, however, carves out exceptions in the following manner to the exemptions contained in Sub-section-(1) of Section-8, in the following manner:

“8. ...

(2) Notwithstanding anything in the Official Secrets Act, 1923(19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.“

7.11 Section-11 of the R.T.I. Act pertains to third party information and reads as follows:

“11. Third party information.- (1) Where a central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section(1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under Sub-section(2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”

7.12 On perusal of the different provisions of the R.T.I. Act mentioned-above as well as from the purpose, for which the said Act was enacted, it is clear that the R.T.I. Act has been enacted to provide such information to the citizens, for transparency in governance and to contain corruption and to prompt accountability in working of public authorities. Detailed provisions, some of which have been noted hereinabove, have been made for the said purpose. The Act has to be interpreted, bearing in mind, the purpose for which the same has been enacted by the legislature.

7.13 Short question, which calls for consideration is, whether as contended, the case of respondent No.4 falls within the exemption clauses of Sub-sections(1)(e) or (j) of Section-8 of the R.T.I. Act.

8.0 Before dealing with the issue, one aspect can be tackled at this stage. It was canvassed before the authorities, by respondent No.4 that its case falls under Section-11(4) of the R.T.I. Act. I am of the opinion that Section-11 only provides for a procedure, for dealing with the request for supplying information, when such information concerns a third party. In such a case, the Public Information officer has to issue a notice to such third party, granting him hearing and pass an order, as may be found proper. Section-11 of the R.T.I. Act neither creates any substantial right to information in favour of an applicant nor does it provide any independent exemption, making an exception to such a right to information. Such an exception has to be found in Section-8 of the R.T.I. Act, which provides for various exemptions from disclosure of information. Case of the respondent No.4, therefore, shall have to fall under Clause-(e) or (j) of Sub-section(1) of

Section-8 the R.T.I. Act, if it were to succeed in opposing the application of the petitioner.

8.1 Clause(e) of Sub-Section(1) of Section-8 of the R.T.I. Act provides for exemption from disclosure of information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. In the present case, petitioner has not made out any case of larger public interest, in disclosure of the information sought under the R.T.I. Act. The question, however, is, can the information supplied by respondent No.4 to the income tax department, in the form of income tax returns, be stated to be in the fiduciary relationship. The term 'fiduciary relationship' has not been defined in the Act. In the Black's Law Dictionary it is defined as follows:

“Fiduciary or confidential relation. A very broad term embracing both fiduciary relations and those informal relations which exist wherever one person trusts in or relies upon another. One founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal. *Heilman's Estate*, Matter of, 37Ill.App.3d 390, 345 N.E.2d 536, 540.

A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of a such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another begin totally prohibited as between persons standing in such a relation to each other. Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and cestui que trust, landlord and tenant, etc.”

8.2 Accounts of respondent No.4, being a religious charitable Trust, is statutorily audited, whose administration is subject to certain controls by the Charity Commissioner under the Bombay Public Trust Act. Its action of filing income tax returns with the Income Tax Department cannot be, in the context of the R.T.I. Act, viewed as a fiduciary relationship. No contrary interpretation can be given to defeat the object of the act, rendering lack of transparency in functioning of public and religious charitable trusts which carry considerable importance in their functioning, which touch greater portion of the population through different activities and would also make them immune from publishing their accounts, expenditure, funds, etc..

8.3 Coming to the Clause-(j) of Sub-Section(1) of Section-8, which exempts the information, which relates to personal information, disclosure of which has no relationship to any public activity or interest.

8.4 As already noted, respondent No.4 is a religious charitable Trust, functioning under the Scheme formulated by the District Court, having considerable public importance and registered under the Bombay Public Trust Act, as a religious charitable Trust. Considering its nature and activities, emerging from the objects of the Trust, it can be stated that disclosure of such information is in relation to any public interest of activity. The Trust is engaged, in public activities, disclosure of its statements and accounts of income tax returns and assessments orders cannot be withheld under Section-8(1)(e) or (j) of the R.T.I. Act.

8.5 It is the case of the petitioner that the Trust is being mis-managed and its funds are mis-directed. It is, further, the case of the petitioner that the trustees are not using the funds of the Trust for the objects of the Trust and are diverting it to other funds for the purpose, with respect to which I express no opinion. These aspects are, however, relevant to judge the requirement of the petitioner to acquire such information.

8.6 The case of “P.R. Kapasiawala”(Supra) is distinguishable. It was the case in which the applicant had asked for details of income tax returns of 100 persons of a club, which information had been gathered by the club from its members. It was in this background, the Court held that the information shall be covered under the exemption, under Section-8(1)(e) of the R.T.I. Act. The Court confirmed the order of the lower authorities, holding that such information was gathered by the Club in fiduciary capacity, which is not the case in the present matter.

8.7 Before closing, I may note that it is true that revisional authority has partially allowed the revision, without any notice to respondent No.4. Respondent No.4 has, however, not challenged the said order and acquiesced in it.

9.0 In the result, order dated 26.04.2010, passed by the CENTRAL INFORMATION COMMISSIONER, is QUASHED. Respondent Nos. 1 to 3 are DIRECTED to SUPPLY the audited balance sheets of respondent No.4, for the last five years. This shall be done within a period of EIGHT WEEKS, from the date of receipt of copy of the order.

9.1 This petition is DISPOSED OF, accordingly.

(AKIL KURESHI, J.)
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